

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARK HALE, TODD SHADLE, and  
LAURIE LOGER, on behalf of themselves and  
all others similarly situated,

Plaintiffs

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, EDWARD  
MURNANE, and WILLIAM G. SHEPHERD,

Defendants.

Case No. 3:12-cv-00660-DRH-SCW

Judge David R. Herndon

Magistrate Judge Stephen C. Williams

**DECLARATION OF ERWIN CHEMERINSKY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Erwin Chemerinsky, am a member in good standing of the State Bar of Illinois and District of Columbia. I am one of the counsel for Plaintiffs and Court appointed Class Counsel in the above-captioned action. I provide this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Costs.

1. I have reviewed the time records that I submitted in this litigation and attest that they are accurate.

2. I further attest that the billing rates used to calculate the lodestar reflect my customary billing rates at the time the services were rendered.

3. A true and correct copy of my resume is attached as Attachment A to this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 15, 2018, in Berkeley,  
California

Erwin Chemerinsky  
Erwin Chemerinsky

# **EXHIBIT A**

ERWIN CHEMERINSKY  
University of California, Berkeley  
School of Law  
Boalt Hall 215  
Berkeley, California 94720  
(510) 642-6483

## **EMPLOYMENT**

2017-present Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law

2008-2017 Dean and Distinguished Professor of Law, University of California, Irvine School of Law. Raymond Pryke Professor First Amendment Law (2013-2017)

2004-2008 Alston & Bird Professor of Law and Political Science, Duke University  
Awards: Duke University Scholar-Teacher of the Year Award, 2006

1983-2004 University of Southern California Law School, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science, 1997-2004  
Director, Center for Communications Law and Policy, 2000-2004  
Legion Lex Professor of Law, 1991-1997; Professor, 1987-1991;  
Associate Professor, 1983-1987;  
Awards: Outstanding Teacher, 1984; 1991

Fall 2002 Visiting Professor, Duke Law School

Spring 1997;  
Spring 2001 Visiting Professor, UCLA Law School

1980-1984 DePaul University College of Law, Chicago, IL  
Assistant Professor, 1980-1983  
Awards: Outstanding Teacher, 1983

1986-present Lecturer, BAR/BRI (Constitutional Law; Professional Responsibility)

1981-1982 Director, Northwestern University, National High School Institute in Speech, Forensics Division, Evanston, Illinois

1979-1980 Attorney, Dobrovir, Oakes, and Gebhardt, Washington, D.C.

1978-1979 Attorney, Attorney General's Program for Honor Law Graduates, United States Department of Justice, Civil Division, Frauds Section, Washington, D.C.

## EDUCATION

LEGAL Harvard Law School, Cambridge, Massachusetts, J.D. 1978  
Honors: Graduated *Cum Laude*

COLLEGE Northwestern University, Evanston, Illinois, B.S. 1975  
Honors: Graduated with *Highest Distinction* (top 1% of class)  
Clarion DeWitt Hardy Scholar (award for academic and extracurricular achievements)  
Florsheim Award (monetary prize received for academic and extracurricular achievements)  
Award Winner, Kirk Contest for essays in rhetorical criticism  
National debate honors (numerous national team and individual awards)

## HONORS

2017 Champion of Justice Award, Western Justice Center  
2017 Robert Cohen Lifetime Achievement Award, Orange County Legal Services  
2017 Justice David Sills Award Orange County Bar Association  
2016 Elected Fellow, American Academy of Arts and Sciences  
2016 George Wythe Award for Contributions to Legal Education, American Board of Trial Advocates  
2016 Bernard Jefferson Award for Judicial Education, California Judges Association  
2016 The Hon. Francisco P. Briseño Lifetime Achievement Award, Orange County Hispanic Bar Association  
2014 Hubert Humphrey First Amendment Award, Anti-Defamation League  
2014 Bernard Witkin Award, California State Bar  
2014 Harry Truman Award, Orange County Democratic Party  
2013 Doctor of Laws (Hon.), Lewis and Clark University  
2013 Korean-American Bar Association of Los Angeles Community Service Award  
2013 Marcus Kauffman Jurisprudence Award, ADL of Orange County  
2012 Ramona Ripston Civil Liberties and Civil Rights Award, ACLU of Southern California  
2012 University Synagogue Community Service Award  
2011 Eleanor Roosevelt Award, Americans for Democratic Action  
2010 American Constitution Society – San Francisco Lawyers Chapter  
2010 Community Service Award, Criminal Courts Bar Association  
2009 Community Service Award, Progressive Jewish Alliance  
2009 National Lawyers Guild  
2008 National Civil Liberties Award, ACLU of Georgia  
2006 Scholar-Teacher of the Year Award, Duke University  
2003 President's Award, Criminal Courts Bar Association  
2003 Freedom of Information Award, Society for Professional Journalists  
2002 Award for Contribution to Judicial Education, National College of Bankruptcy Judges

## **HONORS (CONTINUED)**

2002 Community Service Award, Western Center for Law and Poverty

2001 Community Service Award, Anti-Defamation League

2001 Clarence Darrow Award, People's College of Law

2000 Alumni Merit Award, Northwestern University

1999 Eason Monroe Courageous Advocate Award from the American Civil Liberties Union of Southern California

Awards in 1999 from the Los Angeles Chamber of Commerce, the Los Angeles Urban League, and Los Angeles Branch of the American Society for Public Administration, for work on Los Angeles City Charter.

Judge John Brown Award for Contributions to Federal Judicial Education, 1998.

Distinguished Professor Award, American Civil Liberties Union of Southern California 1996.

Named as the "Most Influential Person In Legal Education" by National Jurist in 2014, 2017.

Named as one of the 500 most influential lawyers in America by Law Dragon in 2014, 2015, 2016.

Named in October 2000 as one of the 10 most influential lawyers in California by the Daily Journal and California Law and Business.

Named to the list of the 100 most influential lawyers in California in 1998, 1999, 2000, 2001, 2002, 2003, 2008, 2009, 2010, 2012, 2014, 2015.

Named in April 2005 as one of the "top 20 legal thinkers in America" by Legal Affairs.

## **PUBLICATIONS**

### **BOOKS**

Free Speech on Campus (Yale University Press, 2017) (with Howard Gillman)

Closing the Courthouse Door: How Your Constitutional Rights Became Unenforceable (Yale University Press, 2017)

The Case Against the Supreme Court (Viking, 2014)

The Conservative Assault on the Constitution (Simon & Schuster, 2010)

Constitutional Law (Boston: Aspen Law & Business, 5<sup>th</sup> ed. 2017; 4<sup>th</sup> ed. 2013; 3d ed. 2009; 2d ed. 2005; 1<sup>st</sup> ed. 2001) (a casebook) (Annual supplements in 2001-2017)

Constitutional Law: Principles and Policies (Boston: Aspen Law & Business, 5<sup>th</sup> ed. 2015; 4<sup>th</sup> ed. 2011; 3d ed. 2006; 2d. ed 2002; 1st ed. 1997) (a one volume treatise)

Criminal Procedure (Aspen Publishers, 3d ed. 2018; 2d ed. 2013 1st ed. 2008) (with Laurie Levenson) (Annual supplements in 2008-2017) (a casebook)

BOOKS (continued)

Criminal Procedure: Adjudication (Aspen Publishers, 3d ed. 2018; 2d ed. 2013; 1st ed. 2008) (with Laurie Levenson)

Criminal Procedure: Investigation (Aspen Publishers, 3 ed. 2018 2d ed. 2013; 1st ed. 2008) (with Laurie Levenson)

Enhancing Government: Federalism for the 21<sup>st</sup> Century (Stanford University Press, 2008)

Federal Jurisdiction (Boston: Aspen Law & Business, 7<sup>th</sup> ed. 2016, 6<sup>th</sup> ed. 2012; 5<sup>th</sup> ed. 2007; 4<sup>th</sup> ed. 2003; 3rd. ed. 1999; Little, Brown & Co., 2d ed. 1994; 1st edition 1989) (a one volume treatise)

Interpreting the Constitution (New York: Praeger, 1987)

CHAPTERS IN BOOKS

“Remedying Separate and Unequal: Is it Possible to Create Equal Educational Opportunity,” in The Enduring Legacy of Rodriguez (Charles Ogletree and Kimberly Jenkins Robinson eds.) (2015)

“Reconceptualizing Federalism,” in Law and the Quest for Justice (Marjorie Sue Zatz et al. eds., 2013)

“Political Ideology and Constitutional Decisionmaking: The Coming Example of the Affordable Care Act,” in The Constitutionality of the Affordable Care Act (Neil S. Siegel ed., 2012)

“*Alden v. Maine*: Sovereign Immunity – A Vestige of Monarchy Inconsistent with Democratic Values,” in We Dissent (Michael Avery ed. 2009)

“*Lyons v. City of Los Angeles*,” in Civil Rights Stories (Myriam Gilles and Risa Goluboff eds.) (2007)

“*Doe v. Santa Fe Indep. School Dist.*,” in Education Law Stories (Michael A. Olivas and Ronna Greff Schneider eds.) (2007)

“Affirmative action,” in Encyclopedia of Race and Racism (2007)

*Foreword* to SUSAN N. HERMAN, *THE RIGHT TO A SPEEDY AND PUBLIC TRIAL* xi-xiii (Praeger, Reference Guides to the United States Constitution, No. 16, 2006)

CHAPTERS IN BOOKS (*continued*)

“Who Should Be The Authoritative Interpreter of the Constitution?: Why There Should Not Be a Political Question Doctrine,” in The Political Question (edited by Bruce Cain) (Oxford University Press 2006)

“The Segregation and Resegregation of American Public Education,” in School Resegregation: Must the South Turn Back (edited by John Boger and Gary Orfield) (University of North Carolina Press 2005)

“Cruel and Unusual: *Lockyer v. Andrade*,” A Year in the Supreme Court (edited by Dave Douglas and Neal Devins) (Duke University Press 2004)

“Neutrality in Establishment Clause Interpretation: A Potentially Radical Right Turn,” in Church-State Relations in Crisis: Debating Neutrality (Stephen Monsma ed.) (Rowman & Littlefield 2002)

“The Constitutional Jurisprudence of the Rehnquist Court,” The Rehnquist Court (M. Belsky ed., Oxford University Press, 2001)

“Balancing Act: Legislative Power and Judicial Independence,” The Report of the Citizens for Independent Courts Task Force on the Role of the Legislature in Setting the Power and Jurisdiction of the Courts, in Uncertain Justice: Politics and America's Courts (2000)

Chapters in Supplement to Encyclopedia of the Constitution on “Abstention,” “*Lebron v. National Railroad Passenger Corp.*” and “State action,” also, with Catherine Fisk, “Filibuster.” (2000)

“Hate Crimes,” in Encyclopedia of Violence in the United States (R. Gottesman & M. Mazon eds.) (1999)

“Equality,” in Encyclopedia of Philosophy (C. Grey ed.) (1999)

“Can Courts Make a Difference?,” in Redefining Equality (N. Devins and D. Douglas eds.) (Oxford Univ. Press 1998)

“Making Sense of the Affirmative Action Debate,” in Civil Rights and Social Wrongs (J. Higham ed.) (1997)

“The Supreme Court and the President,” Encyclopedia of the American Presidency (L. Fisher & L. Levy eds.) (1993)

“Habeas Corpus,” Supplement to the Encyclopedia of the American Constitution (L. Levy & K.



Karst eds.) (1991)

“The Constitution and Private Schools,” in Public Values, Private Schools (N. Devins ed.) (Stanford Educational Series) (1989)

LAW REVIEW ARTICLES (*through September 2017*)

“The First Amendment in the Era of President Trump,” 94 *Denver Law Review* 553 (2017)

“Waiting for Gorsuch,” 20 *Green Bag 2d* 351 (2017)

“Leadership in Law Schools,” 69 *Stanford Law Review* 1765 (2017)

“Abortion: A Woman’s Private Choice,” 95 *Texas Law Review* 1189 (2017) (with Michele Goodwin)

“Introduction: Marijuana Laws and Federalism,” 58 *Boston College Law Review* 857 (2017)

“In Defense of Judicial Supremacy,” 58 *William and Mary Law Review* 1459 (2017)

“The Constitutionality of Withholding Federal Funds from Sanctuary Cities,” 40 *Los Angeles Lawyer* 60 (2017)

“The 2016 Election, the Supreme Court, and Racial Justice,” 83 *University of Chicago Law Review On Line* 49 (2016)

“Everything Changed: October Term 2015,” *Green Bag* (2016)

“The Rational Basis Test is Constitutional (and Desirable),” 14 *Georgetown Law Journal of Law & Public Policy* 401 (2016)

“Thinking About the Supreme Court’s Successes and Failures,” 69 *Vanderbilt Law Review* 919 (2016)

“Compulsory Vaccination Laws are Constitutional,” 110 *Northwestern University Law Review* 589 (2016) (with Michele Goodwin)

“Keynote Address: Reform through Law,” 2015 *Michigan State Law Review* 1235 (2016)

“The Return of the Jedi,” 18 *Green Bag 2d* 363 (2015)

“Religion is Not a Basis for Harming Others,” 104 *Georgetown Law Journal* 1111 (2015) (with Michele Goodwin)

LAW REVIEW ARTICLES (*continued*)

“Judging Opportunity Lost: Assessing the Viability of Race-Based Affirmative Action After *Fisher v. University of Texas*,” 62 UCLA Law Review 272 (2015) (with Mario L. Barnes & Angela Onwuachi-Willig)

“Cooperative Federalism and Marijuana Regulation,” 62 UCLA Law Review 74 (2015) (with Jolene Forman, Allen Hopper, & Sam Kamin)

“Not Equal Yet: Building upon Foundations of Relationship Equality,” 48 UC Davis Law Review 447 (2014)

“Appearances can be Deceiving: October Term 2013 Moved the Law to the Right,” 17 Green Bag 2d 389 (2014)

“Federalism from the Neighborhood Up: Los Angeles's Neighborhood Councils, Minority Representation, and Democratic Legitimacy,” 32 Yale Law & Policy Review 569 (2014) (with Sam Kleiner)

“Lessons from Gideon,” 122 Yale Law Journal 2676 (2013)

“Creating a Law School that Emphasizes Public Interest Law,” 7 DePaul Journal for Social Justice 1 (2013)

“The Court Affects Each of Us,” 16 Green Bag 2d 361 (2013)

“Political Speech and Associational Rights After *Knox v. SEIU*,” 98 Cornell Law Review 1023 (2013) (with Catherine Fisk)

“*Hollingsworth v. Perry*: What Should the Court Do?,” 37 New York University Review of Law and Social Change 229 (2013)

“It's Now the John Roberts Court,” 15 Green Bag 2d 389 (2012)

“A Fixture on a Changing Court: Justice Stevens and the Establishment Clause,” 106 Northwestern University Law Review 587 (2012)

“Citizens United Impact on Judicial Elections,” 60 Drake Law Review 685 (2012) (with Richard Hasen & James Sample)

“Closing the Courthouse Doors,” 90 Denver University Law Review 317 (2012)

LAW REVIEW ARTICLES (*continued*)

“Political Ideology and Constitutional Decisionmaking: The Coming Example of the Affordable Care Act,” 75 Law & Contemporary Problems 1 (2012)

“Formalism Without A Foundation: Stern v. Marshall,” 2011 Supreme Court Review 183 (2012)

“Korematsu v. United States: A Tragedy Hopefully Never to Be Repeated,” 39 Pepperdine Law Review 163 (2011)

“Not a Free Speech Court,” 53 Arizona Law Review 723 (2011)

“Keynote Speech: Reimagining Law Schools?,” 96 Iowa Law Review 1461 (2011)

“Closing the Courthouse Doors, October Term 2010,” 14 Green Bag 2d 375 (2011)

“The Once and Future Equal Protection Doctrine?,” 43 Connecticut Law Review 1059 (2011) (with Mario L. Barnes)

“The Roberts Court and Freedom of Speech,” 63 Federal Communications Law Journal 579 (2011)

“Supreme Court-October Term 2009 Foreword: Conservative Judicial Activism,” 44 Loyola of Los Angeles Law Review 863 (2011)

“The Failing Faith in Class Actions: Wal-Mart v. Dukes and AT&T Mobility v. Concepcion,” 7 Duke Journal of Constitutional Law & Public Policy 73-97 (2011) (with Catherine Fisk)

“The Ideal Law School for the 21st Century,” 1 UC Irvine Law Review 1 (2011)

“A Progressive Visionary: Stephen Reinhardt and the First Amendment,” 120 Yale Law Journal 515 (2010)

“The Roberts Court and Criminal Procedure at Age Five,” 43 Texas Tech Law Review 13 (2010)

“The Future of the First Amendment,” 46 Willamette Law Review 623 (2010)

“Closing the Courthouse Doors: Transcript of the 2010 Honorable James R. Browning Distinguished Lecture in Law,” 71 Montana Law Review 285 (2010)

“Two Cheers for State Constitutional Law,” 62 Stanford Law Review 1695 (2010)

“A Post-Race Equal Protection?,” 98 Georgetown Law Journal 967 (2010) (with Mario L. Barnes & Trina Jones)

LAW REVIEW ARTICLES (*continued*)

“Tucker Lecture, Law and Media Symposium,” 66 Washington and Lee Law Review 1449 (2009)

“The Disparate Treatment of Race and Class in Constitutional Jurisprudence,” 72 Law & Contemporary Problems 109 (2009) (with Mario L. Barnes).

“Why Not Clinical Education?,” 16 Clinical Law Review 35 (2009)

“The Meaning of Bush v. Gore: Thoughts on Professor Amar’s Analysis,” 61 Florida Law Review 969 (2009)

“Foreword: Judicial Opinions as Public Rhetoric,” 97 California Law Review 1763 (2009)

“Moving to the Right, Perhaps Sharply to the Right,” 12 Green Bag 2d 413 (2009)

“Losing Faith: The Supreme Court and the Abandonment of the Adjudicatory Process,” 60 Hastings Law Journal 1129 (2009)

“Foreword: Why Write?,” 107 Michigan Law Review 881 (2009)

“No Warrant for Radical Change: A Response to Professors George and Guthrie,” 58 Duke Law Journal 1691 (2009)

“Civil Liberties and the War Terror: Seven Years After 9/11 History Repeating: Due Process, Torture and Privacy During the War on Terror,” 62 Southern Methodist University Law Review 3 (2009)

“Unpleasant Speech on Campus, Even Hate Speech, Is a First Amendment Issue,” 17 William and Mary Bill of Rights Journal 765 (2009)

“Teaching that Speech Matters: A Framework for Analyzing Speech Issues in Schools,” 42 UC Davis Law Review 825 (2009)

In Memoriam, “Charlie,” 82 Southern California Law Review 177 (2009)

“Absolute Immunity: General Principles and Recent Developments,” 24 Touro Law Review 473 (2008)

“Restoring Separation of Powers,” 35 Human Rights 6 (Fall 2008)

“The Roberts Court at Age Three,” 54 Wayne Law Review 947 (2008)

LAW REVIEW ARTICLES (*continued*)

“The Essential but Inherently Limited Role of the Courts in Prison Reform,” 13 Berkeley Journal of Criminal Law 307 (2008)

“Rethinking Legal Education,” 43 Harvard Civil Rights-Civil Liberties Law Review 595 (2008)

“When it Matters Most, It Is Still the Kennedy Court,” 11 Green Bag 2d 427 (2008)

“How Will Morse v. Frederick Be Applied?,” 12 Lewis & Clark Law Review 17 (2008)

“Protecting Truthful Speech: Narrowing the Tort of Public Disclosure of Private Facts,” 11 Chapman Law Review 423 (2008)

“Supreme Court Review: Symposium Foreword,” 43 Tulsa Law Review 627 (2008)

Symposium Transcript, “Left Out in the Cold? The Chilling of Speech, Association, and the Press in Post-9/11 America: Secrecy and Barriers to Open Government,” 57 American University Law Review 1203 (2008) (with Glenn M. Sulmasy & David M. Hardy)

“Washington v. Glucksberg Was Tragically Wrong,” 106 Michigan Law Review 1501 (2008)

“Why Church and State Should Be Separate,” 49 William and Mary Law Review 2193 (2008)

“Constitutional Problems in the 2005 Bankruptcy Amendments,” 82 American Bankruptcy Law Journal 1 (2008) (with The Honorable Samuel L. Bufford)

“The Rookie Year of the Roberts Court & A Look Ahead: Civil Rights,” 34 Pepperdine Law Review 535 (2007)

Roundtable Transcript, “Thoughts on Commercial Speech: A Roundtable Discussion (February 23, 2007),” 41 Loyola of Los Angeles Law Review 333 (2007) (with Ronald K. L. Collins, Steven H. Shiffrin, & Kathleen M. Sullivan)

“Toward a Practical Definition of the Rule of Law,” 46 Judges' Journal 4 (2007)

“In Defense of Roe and Professor Tribe,” 42 Tulsa Law Review 833 (2007)

“Challenging Direct Democracy,” 2007 Michigan State Law Review 293-306

“The Constitution and Fundamental Rights,” 18 University of Florida Journal of Law & Public Policy ix-xiii (2007)

LAW REVIEW ARTICLES (*continued*)

“Injunctions in Defamation Cases,” 57 Syracuse Law Review 157-173 (2007)

“Rediscovering Brandeis’s Right to Privacy,” 45 Brandeis Law Journal 643-657 (2007)

“The State-created Danger Doctrine,” 23 Touro Law Review 1-26 (2007)

“Turning Sharply to the Right,” 10 Green Bag 2d 423-438 (2007)

“Was He Guilty as Charged? An Alternative Narrative Based on the Circumstantial Evidence From 12 Angry Men,” 82 Chicago-Kent Law Review 691-710 (2007) (with Sara Sun Beale & James E. Coleman, Jr.)

“The Assault on the Constitution: Executive Power and the War on Terrorism,” 40 UC Davis Law Review 1-20 (2006)

“Assessing Chief Justice William Rehnquist,” 154 University of Pennsylvania Law Review 1331-1364 (2006)

“The Assumptions of Federalism,” 58 Stanford Law Review 1763-1791 (2006)

“Federalism Cases in the October 2004 Term,” 21 Touro Law Review 787-807 (2006)

“The Kennedy Court,” 9 Green Bag 2d 335-346 (2006)

“Making Confirmation Hearings More Meaningful,” 115 Yale Law Journal Pocket Part 38 (January 2, 2006) at <http://thepocketpart.org/content/view/28/7/>

“Reconceptualizing Federalism,” 50 New York Law School Law Review 729-755 (2006)

“The Rehnquist Court and the Death Penalty,” 94 Georgetown Law Journal 1367-1383 (2006)

“Why the Supreme Court Was Wrong About the Solomon Amendment,” 1 Duke Journal of Constitutional Law & Public Policy 201 (2006)

“Constitutional Issues Posed in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” 79 American Bankruptcy Law Journal 571 (2005)

“Why Justice Breyer Was Wrong in *Van Orden v. Perry*,” 14 William and Mary Bill of Rights Journal 1 (2005)

“The End of an Era,” 8 Green Bag 345 (2005)

LAW REVIEW ARTICLES (*continued*)

“Enemy Combatants and Separation of Powers,” 1 Journal of National Security Law & Policy 73 (2005)

“The Lower Federal Courts and the War on Terrorism,” 39 Valparaiso Law Review 607 (2005)

“The Constitution and Punishment,” 56 Stanford Law Review 1049 (2004)

“Losing Liberties: Applying a Foreign Intelligence Model to Domestic Law Enforcement,” 51 UCLA Law Review 1619-1643 (2004)

“In Defense of Judicial Review: A Reply to Professor Kramer,” 92 California Law Review 1013 (2004)

“Post 9/11 Civil Rights: Are Americans Sacrificing Freedom for Security,” 81 Denver University Law Review 759 (2004)

“Real Discrimination,” 16 Washington University Journal of Law & Policy 97 (2004)

“Baum Lecture: The Perils of Popular Constitutionalism,” 3 University of Illinois Law Review 673 (2004)

“Evolving Standards of Decency in 2003—Is the Death Penalty on Life Support?,” 29 University of Dayton Law Review 201-222 (2004)

“The Need to Clarify the Meaning of U.S. Supreme Court Remands: The Lessons of Punitive Damages' Cases,” 36 Arizona State Law Journal 513-526 (2004) (with Ned Miltenberg)

“Progressive and Conservative Constitutionalism as America Enters the 21<sup>st</sup> Century,” 67 Law & Contemporary Problems 53-62 (Summer 2004)

“Putting the Gun Control Debate in Social Perspective,” 73 Fordham Law Review 477 (2004)

“Social Justice in the 21<sup>st</sup> Century: A Pro Bono Requirement for Faculty Members,” 37 Loyola of Los Angeles Law Review 1235 (2004)

“The Rehnquist Revolution,” 2 Pierce Law Review 1-16 (2004)

“Unanswered Questions: October Term 2003,” 7 Green Bag 323-334 (2004)

“What Is Commercial Speech?: The Issue Not Decided in *Nike v. Kasky*,” 54 Case Western Reserve Law Review 1143-1160 (2004) (with Catherine Fisk)

LAW REVIEW ARTICLES (*continued*)

“Empowering States When It Matters: A Different Approach to Preemption,” 69 Brooklyn Law Review 1313 (2004)

“Entrenchment of Ordinary Legislation: A Response to Professors Posner and Vermeule,” 91 California Law Review 1773 (2003) (with John Roberts)

“Closing the Courthouse Door to Civil Rights Litigants,” 5 University of Pennsylvania Journal of Constitutional Law 537 (2003)

“October Term 2002: Value Choices by the Justices, Not Theory, Determines Constitutional Law,” 6 Green Bag 367 (2003)

“Separate and Unequal: American Public Education Today,” 52 American University Law Review 1461 (2003)

“The Parsonage Exemption Violates the Establishment Clause and Should Be Declared Unconstitutional,” Whittier Law Review (2003)

“The Segregation and Resegregation of American Public Education: The Role of the Courts,” 81 North Carolina Law Review 1597 (2003)

“Privacy and the Alaska Constitution: Failing to Fulfill the Promise,” 20 Alaska Law Review 29 (2003)

“Understanding the Rehnquist Court: An Admiring Reply to Professor Merrill,” 47 St. Louis University Law Review 659 (2003)

“Ideology and the Selection of Federal Judges,” 36 UC Davis Law Review 619 (2003)

“Balancing Copyright Protections and Freedom of Speech: Why the Copyright Extension Act is Unconstitutional,” 36 Loyola of Los Angeles Law Review 83 (2002)

“Have the Rehnquist Court’s Federalism Decisions Increased Liberty,” 29 Human Rights 3 (2002)

“How Should We Think About Bush v. Gore,” 34 Loyola University of Chicago Law Journal 1 (2002)

“The Rhetoric of Constitutional Law,” 100 Michigan Law Review 2008 (2002)

“Does Federalism Advance Liberty,” 47 Wayne State Law Review 911 (2002)



LAW REVIEW ARTICLES (*continued*)

“Restrictions on the Speech of Judicial Candidates Are Unconstitutional: A Reply to Professor O’Neil,” 35 Indiana Law Review 735 (2002)

“Ensuring the Supremacy of Federal Law: Why the District Court Was Wrong in *Westside Mothers v. Haveman*,” 12 Health Matrix 139 (2002)

“Why the Rehnquist Court is Wrong About the Establishment Clause,” 33 Loyola University of Chicago Law Journal 221 (2001)

“Against Sovereign Immunity,” 53 Stanford Law Review 1201 (2001)

“Bush v. Gore Was Not Justiciable,” 76 Notre Dame Law Review 1093 (2001)

“Henry Lecture: Beyond Formalism in Constitutional Law,” 54 University of Oklahoma Law Review 1 (2001); “Further Thoughts,” 54 Oklahoma Law Review 59 (2001)

“An Independent Analysis of the Board of Inquiry Report on the Rampart Scandal,” 34 Loyola of Los Angeles Law Review 545 (2001)

“The Expressive Interest of Associations,” 9 William and Mary Bill of Rights Journal 595 (2001) (with Catherine Fisk)

“Right Result, Wrong Reasons: *Reno v. Condon*,” 25 Oklahoma City University Law Review 823 (2001)

“The Jurisprudence of Justice Scalia: A Critical Appraisal,” 22 Hawaii Law Review 385 (2000)

“Content Neutrality as a Central Problem of Freedom of Speech: Problems in the Supreme Court’s Application,” 74 Southern California Law Review 49 (2000)

“The Court Should Have Remained Silent: Why the Court Erred in Deciding *Dickerson v. United States*,” 149 University of Pennsylvania Law Review 287 (2000)

“Further Reflections of a Framer: The Los Angeles Charter Reform Experience,” 3 Green Bag 125 (Winter 2000)

“Learning the Wrong Lessons from History: Why There Must Be an Independent Counsel Law,” 5 Widener Law Symposium Journal 1 (2000)

“Are Student Delivered Graduation Prayers and Religious Speeches Constitutional,” 5 Nexus 3 (Fall 2000)

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“The Hypocrisy of Alden v. Maine: Judicial Review, Sovereign Immunity, and the Rehnquist Court,” 33 Loyola of Los Angeles Law Review 1283 (June 2000)

“Protect the Press: A First Amendment Standard for Safeguarding Aggressive Newsgathering,” 33 University of Richmond Law Review 1143 (2000)

“Newsgathering and Privacy Rights: Protecting Privacy from Technological Intrusions,” 99 Annual Survey of American Law 183 (2000)

“Balancing the Rights of Privacy and the Press: A Reply to Professor Smolla,” 67 George Washington Law Review 1152 (2000)

“Students Do Leave Their First Amendment Rights At the School House Gates: What’s Left of *Tinker?*,” 48 Drake Law Review 527 (2000)

“Donahue Lecture: The Constitution and Authoritarian Institutions,” 32 Suffolk University Law Review 441 (1999)

“On Being a Framers: The Los Angeles Charter Reform Commission,” 2 Green Bag 131 (1999)

“The Supreme Court, Public Opinion, and the Role of the Academic Commentator,” 40 South Texas Law Review 943 (2000)

“In Defense of the Big Tent: The Many Audiences for Legal Scholarship,” 34 Tulsa Law Review 667 (2000) (with Catherine Fisk)

“The Rehnquist Court and Justice: An Oxymoron?,” 1 Washington University Journal of Law and Policy 37 (1999)

“Civil Rights Without Remedies: Vicarious Liability Under Title VII, Title IX, and Section 1983,” 7 William and Mary Bill of Rights Journal 755 (1999) (with Catherine Fisk)

“Do State Religious Freedom Restoration Acts Violate the Establishment Clause or Separation of Powers?,” 32 UC Davis Law Review 645 (1999)

“The Ethics of Being a Commentator III,” 50 Mercer Law Review 737 (1999) (with Laurie Levenson)

“A Framework for Analyzing the Constitutionality of Restrictions on Federal Court Jurisdiction in Immigration Cases,” 29 University of Memphis Law Review 295 (1999)

“Preserving an Independent Judiciary: The Need for Contribution and Expenditure Limits in

LAW REVIEW ARTICLES (*continued*)

Judicial Elections,” 74 Chicago-Kent Law Review 133 (1999)

“The Religious Freedom Restoration Act is a Constitutional Expansion of Rights,” 39 William and Mary Law Review 601 (1998)

“More Speech is Better,” 45 UCLA Law Review 1635 (1998)

“Silence is Not Golden: Protecting Lawyer Speech Under the First Amendment,” 47 Emory Law Journal 859 (1998)

“Formalism and Functionalism in Federalism Analysis,” 13 Georgia State Law Review 959 (1997)

“The Filibuster,” 49 Stanford Law Review 181 (1997) (with Catherine Fisk)

“The Ethics of Being a Commentator II,” 37 Santa Clara Law Review 913 (1997) (with Laurie Levenson)

“In Defense of Courts: Perspectives on Decision-Makers,” 71 American Bankruptcy Law Journal 109 (1997)

“Lawyers Have Free Speech Rights Too: Why Gag Orders on Lawyers Are Almost Always Unconstitutional,” 17 Loyola of Los Angeles Entertainment Law Journal 311 (1997)

“No Presidential Immunity for Conduct Unrelated to the Presidency,” 2 Nexus 24 (1997)

“Federalism As Empowerment, Not Limits,” 45 University of Kansas Law Review 1219 (1997)

“What Would Be the Impact of Eliminating Affirmative Action,” 27 Golden Gate Law Review 319 (1997)

“Dunwoody Distinguished Lecture in Law: The Values of Federalism,” 47 University of Florida Law Review 499 (1996)

“The Impact of the Proposed California Civil Rights Initiative,” 23 Hastings Constitutional Law Quarterly 999 (1996)

“The Ethics of Being a Commentator,” 69 Southern California Law Review 1303 (1996) (with Laurie Levenson)

“The Rehnquist Revolution,” 1 Nexus 29 (1996)

LAW REVIEW ARTICLES (*continued*)

“Eliminating Discrimination in Administering the Death Penalty: The Need for the Racial Justice Act,” 35 Santa Clara Law Review 519 (1995)

“Reporters Draft for the Working Group on Principles to Use When Considering the Federalization of Civil Law,” 46 Hastings Law Journal 1305 (1995)

“Is It the Siren’s Call?: Judges and Free Speech While Cases are Pending,” 28 Loyola of Los Angeles Law Review 831 (1995)

“Fragmentation of Federal Rules,” 46 Mercer Law Review 757 (1995) (with Barry Friedman)

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“A Bad Time for Civil Rights,” Daily Journal Report, August 6, 1993

“Notice Pleading,” 29 Trial 73, June 1993

“Mr. Civil Rights,” 29 Trial 66, April 1993

“Religion Clause Doctrine: Potential for Change,” 29 Trial 81, February 1993

“Supreme Court Review: Making Sense of Habeas Corpus,” 28 Trial 79, December 1992

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“Harris Execution: Did Court Abuse Its Power?” 2 State Bar Bulletin 1, September 1992 (with Caminker)

“As California Goes . . .,” 12 California Lawyer 47, August 1992

“Don’t Be Fooled: It’s Still a Conservative Court,” Daily Journal Report, July 31, 1992

“A Precarious Ban on Prayer: Lee v. Weisman,” Legal Times, July 27, 1992

“Supreme Court Overview,” ACLU Open Forum, Summer 1992

“Pulling the Plug on Roe v. Wade,” Los Angeles Daily News, June 21, 1992

“Conservative Judges Disregard the Law to Make Sure Execution Was on Schedule,” Los Angeles Daily Journal, June 8, 1992

“A Fair Trial Produced an Unfair Result,” 131 New Jersey Law Journal 87, May 11, 1992 (and other American Lawyer newspapers)

“Focus on the Future, Not the Verdict,” Los Angeles Daily News, May 4, 1992

“Invasion of the House Snatchers,” Los Angeles Times, April 22, 1992

“The Bill of Rights: An Illustrated History,” 11 California Lawyer, December 1991

“Next Supreme Court Term: Danger for Civil Liberties,” 67 ACLU Open Forum, September/October 1991

“Is Clarence Thomas a Stealth Nominee,” Los Angeles Daily News, July 8, 1991

“Can the Bill of Rights Survive the Rehnquist Court?” Los Angeles Daily News, May 26, 1991

“Fight Illegal Police Practices in State Courts,” Los Angeles Daily Journal, May 8, 1991 (with Sobel & Hoffman)

“DOJ Has Few Weapons Against Police Abuse,” Los Angeles Daily Journal, May 7, 1991 (with Sobel & Hoffman)

“Judicial Oversight Limited By Supreme Court,” Los Angeles Daily Journal, May 6, 1991 (with Sobel & Hoffman)

“Stunting the Constitution’s Growth,” 26 Trial 36, November 1990

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“A Hero Retires,” 67 ACLU Open Forum, September/October 1990

“A Mixed Year for Civil Rights/Civil Liberties,” 67 ACLU Open Forum, September/October 1990

“No Answer, No Seat: The Souter Hearings,” Los Angeles Daily Journal, September 6, 1990

“Jury Nullification is Conscience of Community,” Los Angeles Daily Journal, August 31, 1990

“Church, State, and Peyote: State Now Has Free Rein to Meddle,” Los Angeles Daily Journal, May 11, 1990

“Protecting People from the Government,” Los Angeles Daily News, January 21, 1990

“The Constitution and the Common Law,” 73 Judicature 149 (1989)

“Should Racist Speech Be Limited?,” ACLU Open Forum, November/December 1989

“A Bad Year for Civil Rights and Civil Liberties,” ACLU Open Forum, September/October 1989

“Abortion in America,” Los Angeles Herald Examiner, July 9, 1989

“The High Court Weakens the Strong ’64 Civil Rights Act,” Los Angeles Daily Journal, July 3, 1989 (with Hoffman & Sobel)

“The Supreme Court and Civil Rights,” Orange County Business Journal, July 3, 1989

“Courts Place Limits on Key Tool for Civil Rights Actions,” Los Angeles Daily Journal, May 2, 1989 (with Hoffman & Sobel)

“On the Shoulders of Giants: Does Original Intent Matter?,” Los Angeles Daily Journal, February 20, 1989

“Abortion Rights and the Court,” Los Angeles Daily News, January 15, 1989

“‘Tip Wage’ in Lucas’ Court,” The Sacramento Bee, September 13, 1988

“Private Conduct and Public Values,” 22 Beverly Hills Bar Journal 163 (1988)

“L.A.’s Bathhouses No Civil Liberty Cause,” Los Angeles Herald Examiner, January 26, 1988

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"Finding Constitutional Privacy," The Recorder (San Francisco), October 26, 1987

"History as the Court Likes It," Los Angeles Herald Examiner, September 13, 1987

"How the System Works: The Lessons of the Bork Case," Los Angeles Daily News, October 11, 1987

"Expanding the Constitution's Protections: The Lasting Significance of Jones v. Alfred H. Mayer Co.," 34 St. Louis Bar Journal 27 (1987)

"How Should We Celebrate the Constitution's 200th Year," ADL Bulletin, June 1987

"Privacy: The Right the Framers Left Out," Los Angeles Herald Examiner, April 12, 1987

"Should the Voters Confirm: Yes: The High Court Critics Distort Issues and Facts at the Public's Peril," Los Angeles Daily Journal, October 31, 1986

"Judges Must Base Their Rulings on the Law, Not on Popular Opinion," Palo Alto Times Tribune, October 26, 1986

"High Court Vote," San Francisco Examiner, October 8, 1986

"The Judicial Conscience of a Conservative," Los Angeles Herald Examiner, September 24, 1986

"Assuring Judicial Independence," USC Law, Fall/Winter 1986

"Why the Supreme Court was Wrong on Death Qualified Juries," Cleveland Plain Dealer (and other subscribers to the Scripps- Howard News Service), May 25, 1986

"Drug Testing: A Cure Worse than the Disease," Los Angeles Herald Examiner, May 14, 1986

"First Amendment Protects Metzger's Rights, Too," The Jewish Journal, April 18-24, 1986

"California's Law on Maternity Leave Should be Upheld," Los Angeles Herald Examiner (and other subscribers to the Scripps- Howard News Service), January 28, 1986

"Goldrush: Bar Welfare Recipients from the Lottery? Con: A Paternalistic Violation of Rights," Palo Alto Times Tribune, March 2, 1986

"Sexual Identity is Private," New York Times, March 13, 1985

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“Protecting the First Amendment Against Legislative Encroachment: A Case Against Prohibition of Pornography,” *Cogitations*, Winter 1984, reprinted in *Human Rights*, Spring 1985

**COMMUNITY SERVICE AND PROFESSIONAL ACTIVITIES**

Pro bono appellate litigation, including serving as counsel of record and arguing in the United States Supreme Court in *United States v. Apel* (2013), *Scheidler v. NOW* (2005), *Van Orden v. Perry* (2005), *Tory v. Cochran* (2005), *Lockyer v. Andrade* (2003). Briefed and argued many cases in federal courts of appeals, the California Supreme Court, and other courts.

Executive Committee, Association of American Law Schools (2017-present)

Board of Directors, American Constitution Society (2015-present)

Board of Directors, Western Justice Center, 2009-present

Chair, Mayor’s Blue Ribbon Commission on City Contracting in Los Angeles, 2004-2005 (report issued February 2005)

Commissioner and Chair, Los Angeles Elected Charter Reform Commission. (Elected by voters April 8, 1997 for a two-year term to Commission to propose a new City Charter. Charter adopted by voters June 8, 1999)

Member, Governor's Task Force on Diversity and Outreach, 1999-2000 (appointed by Governor Gray Davis, September 1999)

Independent Analysis of the Board of Inquiry Report on the Rampart Police Scandal, Prepared at the Request of the Police Protective League, September 2000

Member, Amicus Committee, American Bar Association, August 2011-August 2012

Board of Directors, Legal Aid Society of Orange County, 2009-2017

Member, Board of Directors, ACLU of North Carolina (2005-2008)

Member, Board of Directors, MAZON (2004-2010)

Fellow, Center for Excellence in Teaching, University of Southern California, 1997-2000; Senior Fellow, 2000-2004

COMMUNITY SERVICE AND PROFESSIONAL ACTIVITIES (*continued*)

President, Academic Senate, University of Southern California, 1996-1997 (President-elect, 1995-1996)

Lecturer, Federal Judicial Center, 1989-present (speaking to federal judges, magistrates, and bankruptcy judges at programs throughout the country)

Lecturer, National Judicial College, 1988-present (speaking at programs for judges sponsored by the National Judicial College)

Lecturer, Center for Civic Education, 1990-present (speaking at teacher training programs)

Lecturer, Constitutional Rights Foundation, 1992-present (speaking at meetings, including teacher training programs)

Chair, Civil Rights Section, American Trial Lawyers Association, 1998-1999 (Vice-chair, 1997-1998)

Editorial Advisory Board, Law Division, Wolters Kluwer (previously Aspen Law and Business)

Reporter, Task Force on the Legislative Role in Setting Powers and Jurisdiction of the Courts, Citizens for Independent Courts, 1998-2000

Reporter, Task Force on Federalization of Civil Law Matters, Three-Branch Roundtable (Convened by Attorney General Janet Reno, Chief Justice William Rehnquist, and Senator Joseph Biden, March 7, 1994)

Reporter, Ninth Circuit Rule 11 Study Committee, 1990-1992 (prepared, "Rule 11 in the Ninth Circuit," Report of the Ninth Circuit Rule 11 Study Committee (1992))

Member, Technical Assistance in Constitution Drafting for the Republic of Belarus, American Bar Association, Central and Eastern European Law Initiative, Minsk, Belarus, August 1992

President, Board of Regents, Temple Emanuel Community Day School, Vice-President for Education, Temple Emanuel, 1994-1996

Member, Editorial Advisory Board, California Lawyer Magazine, 1994-2014

Member, Litigation Committee, American Association of University Professors, 1991-1995

Member, Board of Directors, American Civil Liberties Union of Southern California, 1987-1997; Member of the Executive Committee, 1991-1995



COMMUNITY SERVICE AND PROFESSIONAL ACTIVITIES (*continued*)

Member, Regional Council, American Jewish Congress, 1992-present; Member, Board of Directors, 1993-1998

Chair, Federal Courts Section, American Association of Law Schools, 1993 (Chair-elect, 1992)

Member, Steering Committee, Section on Professional Responsibility, American Association of Law Schools, 1987-88; 1989-90

Member, Task Force on Professional Responsibility, Committee of Bar Examiners, State of California, 1987

Chair, Special Committee on Tenure and Promotions, University of Southern California, 1994-1996

Co-drafter (with Jeffrey Shaman) of Illinois Freedom of Information Act, on behalf of the American Civil Liberties Union of Illinois, adopted by the Illinois State Legislature, 1983

Debate Manager, Mayoral Campaign of Harold Washington, Chicago, Illinois, 1982-83